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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEFANO FACCIN, RENE PURNADI, TONY HULKKONEN,  
JAAKKO RAJANIEMI, MARKKU TUOHINO, and  
MOHAN SIVANANDAN

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Appeal 2009-006018  
Application 09/731,758<sup>1</sup>  
Technology Center 2400

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Decided: June 22, 2010

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*Before* JAY P. LUCAS, THU A. DANG, and CAROLYN D. THOMAS,  
*Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

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<sup>1</sup>Application filed December 8, 2000. Application No. 09/731,758 is a continuation-in-part of Application No. 09/580,425 (filed May 30, 2000), which issued as patent 6,725,036 on April 20, 2004. The real party in interest is Nokia.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1 to 85 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to a method of controlling access of subscriber equipment that is "roaming" (*i.e.*, away from a home communications network in one of a plurality of visited communications networks). (*See* claim 1; Spec. 2, ll. 11-12; 5, ll. 10-12; 7, ll. 10-12.) In the words of Appellants:

The [visited communications] networks directly connected to the home network ... may be a public cellular visited network such as a general packet radio system (GPRS), a wireline internet service provider (ISP), or a wireless local area network (LAN) such as ... a local area network within a corporation. ... [An] application level registration message is sent from an entity in the visited network to an address of an entity in the home network which address is obtained from another network entity in the visited network. The entity in the home network receiving the application level registration message uses the received identification of the subscriber and the level or type of access to fetch from a storage in the home network a subscriber profile ... used to provide connectivity to the user equipment in the visited network and any network in accordance with the specified level or type of access in the application level registration message.

(Spec. 3, ll. 1-13).

Claim 1 is exemplary and is reproduced below:

1. A method comprising:

sending, from a visited network of a plurality of networks to a home network, an identification of a subscriber and an access to be provided to the subscriber;

in response to the identification of the subscriber and access to be provided to the subscriber, storing, in the visited network, a subscriber profile of an authorized access of a plurality of authorized accesses to be provided to the subscriber; and

controlling access of the subscriber to a network dependent upon a comparison of the access to be provided to the subscriber and the stored subscriber profile having the authorized access of the plurality of authorized accesses,

wherein an application level registration message including the identification of the subscriber is generated in response to a request from a subscriber equipment to the visited network, and

wherein the visited network receiving the request transmits an update location message to the home network for informing the home network of the identification of the subscriber and a particular network at which the subscriber is located.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Pepe	5,742,668	Apr. 21, 1998
Hoffman	6,148,199	Nov. 14, 2000

Rune	6,611,685 B1	Aug. 26, 2003 (filed on Apr. 12, 2000)
Bharatia	US 2001/0031635 A1	Oct. 18, 2001 (filed on Dec. 22, 2000)

## REJECTIONS<sup>2</sup>

The Examiner rejects the claims as follows:

R1: Claims 1, 34, 37, 68, 78, and 85 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Bharatia.

R2: Claims 1 to 31 and 34 to 85 stand rejected under 35 U.S.C. § 103(a) for being obvious over Pepe in view of Rune.

R3<sup>3</sup>: Claims 32 and 33 stand rejected under 35 U.S.C. § 103(a) for being obvious over Pepe in view of Hoffman.

Appellants contend that Bharatia does not anticipate the claimed subject matter because the Examiner does not demonstrate all of the elements of the claimed invention in the reference. (*See* App. Br. 16, middle; Reply Br. 8, bottom.) Appellants further contend that Pepe alone, or in combination with Rune, does not render the claimed subject matter

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<sup>2</sup> In the Examiner's Answer, the Examiner withdrew 35 U.S.C. § 103(a) rejections of claims 1, 34, 37, 68, and 78 over Lahtinen (patent number 6,745,029) in view of Akhtar (patent number 6,769,000) and Hoffman in view of Roy (patent number 6,947,423) (Ans. 3, top). Since the rejections are not before us, we do not address Appellants' arguments in the Brief concerning these rejections (App. Br. 24, top to 27, middle).

<sup>3</sup> We consider claims 32 and 33 as being rejected under 35 U.S.C. § 103(a) over Pepe in view of Rune and Hoffman. Since claims 32 and 33 depend directly or indirectly from claim 1, we treat the Examiner's omission of Rune from the rejection [R3] as merely a typographical error.

unpatentable for failure of the references to teach the claim limitation “wherein the visited network receiving the request transmits an update location message to the home network for informing the home network of the identification of the subscriber and a particular network at which the subscriber is located,” as required by claim 1. (*See* App. Br. 21, middle.) The Examiner contends that each of the claims is properly rejected (Ans. 16, top).

We will review the rejections in the order argued, and as grouped in Appellants’ Briefs. We have only considered those arguments that Appellants actually raised in the Briefs. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## ISSUES

The issues involve whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The first issue under 35 U.S.C. § 102(e) specifically turns on whether Bharatia teaches an “identification of the subscriber and a particular [visited] network at which the subscriber is located” as required by claim 1. The second issue under 35 U.S.C. § 103(a) specifically turns on whether Rune discloses or suggests Appellants’ claimed “update location message,” as recited in claim 1.

### FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

#### *Disclosure*

1. Appellants have invented a system and method of controlling access of a subscriber to any communications network. (*See* claim 1; Spec. 2, ll. 11-12.) An application level message is sent from subscriber equipment connected to a home network or a visited network (*id.* at ll. 13-15). The message includes a subscriber identity and level of access to any network (*id.* at ll. 17-19). A registration message is sent from an entity in the visited network to the home network (claim 1; Spec. 3, ll. 6-8). The home network uses the received identification of the subscriber and the level or type of access to fetch from a storage in the home network a subscriber profile to be used to provide connectivity to the user equipment in the visited network (Spec. 3, ll. 8-13). The visiting network receiving the request transmits an update location message to the home network to inform the home network of the subscriber's identification and the subscriber's network location. (*See* claim 1.)

#### *Bharatia*

2. The Bharatia reference teaches controlling access of a subscriber to any communications network. (*See* ¶¶ [012], [0111], and [0112].) A registration request message is sent from a mobile terminal connected to a mobile network or a visited legacy network. (*See* ¶ [0111] and Fig. 3.) In reply, a registration notification message is sent from an entity in the visited network to the home network. (*See* ¶ [0112] and Fig. 3.)

*Pepe*

3. Pepe discloses controlling access of a wireless portable phone to any communications network. (*See* col. 2, ll. 37-41 and 63-65.) A message is sent from the wireless portable phone connected to the home network or a visited network (col. 2, ll. 31-33). The message from a home location register of the home network includes a customer profile and service features (col. 2, ll. 18-19 and 21-25). A registration message is sent from a visiting location register in the visited network to the home network (col. 2, l. 24-25). The home network uses the received customer profile and the service features to fetch from a storage entity in the home network a customer profile to be used to provide connectivity to the mobile terminal in the visited network. (*See* col. 2, ll. 21-22 and 28-31.) The visiting network updates the home network to inform the home network of the subscriber's profile and the subscriber's network location (col. 2, ll. 31-33).

*Rune*

4. The Rune reference discloses a "MAP\_UPDATE\_LOCATION service." (Col. 3, l. 10).

*Hoffman*

5. The Hoffman reference discloses a home location register of a communications network (col. 1, ll. 34-35). When a communication device sends a request, the home location register finds the correlating subscriber records, determines access privileges, user profiles, and user information and transfer the data to a visitor location register (col. 1, ll. 31-37).



## PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

## ANALYSIS

*Argument with respect to the rejection  
of claims 1, 34, 37, 68, 78, and 85  
under 35 U.S.C. § 102(e) [R1]*

Regarding exemplary claim 1, the Examiner finds that "it would have been obvious to one of ordinary skill in the art that the 'Update Location' message of Bharatia includes an identification of the subscriber and the new network." (Ans. 13, middle).

Appellants contend that the Examiner's conclusion is improper since the rejection [R1] is stated as an anticipation of the claimed invention (Reply Br. 8, bottom).

We agree with Appellants. The Examiner erroneously applies the law of obviousness in an anticipation rejection [R1]. Accordingly, we find error in the rejection of claim 1. Independent claims 34, 37, 68, 78, and 85 are argued with exemplary claim 1 and stand therewith.

*Argument with respect to the rejection  
of claims 1 to 31 and 34 to 85  
under 35 U.S.C. § 103(a) [R2]*

Exemplary claim 1 recites, in relevant part, “wherein the visited network receiving the request transmits an update location message to the home network for informing the home network of the identification of the subscriber and a particular network at which the subscriber is located.”

The Examiner finds that Pepe discloses updating the location of a subscriber at a home network (col. 2, ll. 31-37; Ans. 14, bottom). More specifically, Pepe discloses an “automatic roamer registration” that involves “creating a new VLR, loading profile data to the VLR, and updating the visiting location of a user in the HLR.” (col. 2, ll. 34-36). The Examiner also finds that the Rune reference’s update location message performs an updating function (col. 3, ll. 7-12; col. 6, ll. 23-30; Ans. 15, top). The Examiner proposes in the Answer that a person of ordinary skill in the art would have modified Pepe’s method of “updating the visiting location of a user in the HLR” using Rune’s disclosed update location message at the time Appellants’ claimed invention was made (Ans. 15, top).

Appellants argue Rune’s features:

Rune does not teach or suggest that the visited network transmits an update location message to the home network for informing the home network of the identification of the subscriber. Rather, in Rune subscription information is sent from the gateway location register to the visited location register if a ‘location information confirm in HLR’ flag is set to not confirm when the gateway location register receives the update location message from the visited location register.

(App. Br. 21, middle).

We agree with the Examiner for the following reasons. We find that Appellants have invented a system and method of controlling access of a subscriber to any communications network (FF#1). An application level message is sent from subscriber equipment connected to a home network or a visited network (*id.*). The message includes a subscriber identity and level of access to any network (*id.*). A registration message is sent from an entity in the visited network to the home network (*id.*). The home network uses the received identification of the subscriber and the level or type of access to fetch from a storage entity in the home network a subscriber profile to be used to provide connectivity to the user equipment in the visited network (*id.*). The visiting network receiving the request transmits an update location message to the home network to inform the home network of the subscriber's identification and the subscriber's network location (*id.*).

In comparison, we find that Pepe discloses controlling access of a wireless portable phone (Appellants' claimed "subscriber equipment") to any communications network (FF#3). A message (Appellants' claimed "application level message") is sent from the wireless portable phone connected to the home network or a visited network (*id.*). The message from a home location register of the home network includes a customer profile (Appellants' claimed "identification of the subscriber") and service features (Appellants' claimed "level or type of access") (*id.*). A registration message is sent from a visiting location register in the visited network to the home network (*id.*). The home network uses the received customer profile (the claimed "identification of the subscriber") and the service features (the claimed "level or type of access") to fetch from the home location register

(Appellants' claimed "storage") in the home network a customer profile to be used to provide connectivity to the mobile terminal in the visited network (*id.*). The visiting network updates the home network to inform the home network of the subscriber's profile and the subscriber's network location (*id.*). In addition, we find that the Rune reference discloses a "MAP\_UPDATE\_LOCATION service" (FF#4) (cited by the Examiner as Appellants' claimed "update location message").

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. (*See In re Keller*, cited above.)

We direct Appellants' attention to column 6 at lines 26 to 27 of Rune. In the lines the Examiner cited in the Answer, Rune discloses a "MAP\_UPDATE\_LOCATION" (FF#4). Although Rune's "MAP\_UPDATE\_LOCATION" is not "in response to a request from a subscriber equipment," as required by claim 1, the base reference Pepe discloses the essential teaching (*i.e.*, the visiting location register is prompted by the wireless messaging equipment of Pepe to update the home location register of the home network). (*See* FF#3.) Appellants' argument merely attacks Rune, and not the combination of the Pepe and Rune references (App. Br. 21, middle).

Such an attack on Rune alone is not in accordance with *In re Keller*, cited above. The combination of Pepe, which discloses Appellants' claimed "updating" step, and Rune, which explicitly discloses a "MAP\_UPDATE\_LOCATION service" (the claimed "update location message") (FF#4), would have been recognized by the skilled artisan as being similar to Appellants' claim limitation "wherein the visited network

receiving the request transmits an update location message to the home network for informing the home network of the identification of the subscriber and a particular network at which the subscriber is located” (claim 1). Accordingly, we find no error in the rejection [R2] of claim 1.

We selected claim 1 as representative of the claims on appeal. Claims 2 to 31 and 34 to 85 were not separately argued (*see* App. Br. 18, top to 22, top) in accordance with 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, claims 2 to 31 and 34 to 85 fall with claim 1.

*Argument with respect to the rejection  
of claims 32 and 33  
under 35 U.S.C. § 103(a) [R3]*

Appellants fail to make any separate arguments for claims 32 and 33. Instead, Appellants merely recite the language of claim 32. Recitation of claim language is not considered a persuasive form of argumentation. (*See* 37 C.F.R. § 41.37(c)(1)(vii); 37 C.F.R. § 1.111(b).) Accordingly, we find no error in the rejection [R3].

**CONCLUSIONS OF LAW**

Based on the findings of facts and analysis above, we conclude that the Examiner erred in the rejection [R1] of claims 1, 34, 37, 68, 78, and 85 under 35 U.S.C. § 102(e). We find no error in the rejections [R2 and R3] of claims 1 to 85 under 35 U.S.C. § 103(a), respectively.

DECISION

We reverse the Examiner's rejection [R1] of claims 1, 34, 37, 68, 78, and 85. We affirm the Examiner's rejections [R2 and R3] of claims 1 to 85. Since at least one rejection encompassing all claims on appeal is affirmed, the decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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